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VANDEVELD & BORRERO

SUPERIOR COURT

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Date 4/1
Time 10:21 AM
Received by fen

32-13-224

Attorneys for the Government of Guam

**IN THE SUPERIOR COURT OF GUAM
HAGATNA, GUAM**

MARIA A. GANGE, JESUS CRUZ)
CHARFAUROS, ANA A. CHARGUALAF,)
JESUS G. AGUIGUI, for themselves and on)
behalf of all others similarly situated.)

CIVIL CASE NO. CV1461-10

Plaintiffs,

**GOVERNMENT'S POSITION ON THE
ISSUES THE COURT ORDERED
BRIEFED ON NOVEMBER 30, 2012**

vs.

GOVERNMENT OF GUAM, GUAM)
ANCESTRAL LANDS COMMISSION by)
and through its individual Commissioners)
(for injunctive relief only to prevent a)
transfer) and DOES One (1) through Three)
hundred (300), inclusive.)

Defendants.

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The Government's position on the issues the Court ordered briefed on November 30, 2012, are as follows:

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1 **Issue #1: Whether this is a takings case.**

2 The Government's position is that this is not a takings case, since the land in
3 question, or the potential profits therefrom, are not private property. The government has
4 briefed this issue in its September 8, 2010 Motion to Dismiss and in its April 30, 2012
5 Opposition to Motion for Partial Summary Judgment, relying primarily upon the reasoning
6 of the case *A.B.A.T.E. of Illinois, Inc. v. Giannoulis, Treasurer, State of Illinois, et al.*,
7 2010 WL 2222801 (Ill.App.4Dist. 2010). The government respectfully incorporates that
8 briefing herein. The government has nothing to add to its prior briefing on this issue at this
9 time.
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12 **Issue #2: Whether if this is a takings case, the taking qualifies as being for a legitimate
public purpose.**

13 If the Court rules that the property involved is indeed the private property of the
14 private plaintiff class, and that this indeed is therefore a takings case, then it is the
15 government's position that the taking does not qualify as being for a public purpose, and
16 therefore must be enjoined. That is because if this is a takings case, then it is a taking from
17 one private property owner, or from one class of private property owners, for the purpose
18 of giving that property to another private property owner, or group of private property
19 owners, for their personal, private benefit: as opposed to being for the benefit of the wider
20 public generally. Even under the U.S. Supreme Court's arguably expanded definition of
21 "public purpose" in *Kelo v. City of New London*, 545 U.S. 469 (2005), this would not
22 qualify as one.
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2 **Issue #3: If this is a takings case, then what would constitute just compensation to the**
3 **plaintiff class?**

4 If the Court rules that this is indeed a takings case, and that the taking does indeed
5 serve a legitimate "public purpose," then it is the government's position that the taking
6 should be enjoined.

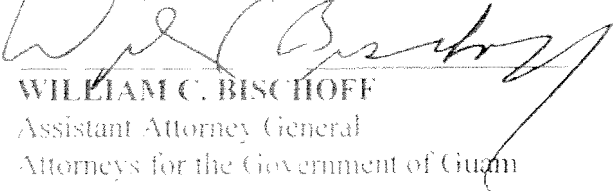
7 In that event, the taking will not happen, and no compensation will have to be paid.
8 It plainly was not the legislature's intention to take the private property of anyone in this
9 case. If the legislature had so intended, the legislature would have made plans to pay the
10 tens (at a minimum) of millions of dollars of just compensation that would be required. It
11 never having been the intent of the Legislature to do a "taking," and to pay the just
12 compensation that would be required if this were a "taking," then Public Law 30-158
13 should simply be enjoined if the Court decides that it does indeed constitute a taking.
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17 Respectfully submitted this

2/1/2013

18
19 OFFICE OF THE ATTORNEY GENERAL
LEONARDO M. RAPADAS, Attorney General

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21 By:


22 **WILLIAM C. BISCHOFF**
Assistant Attorney General
Attorneys for the Government of Guam
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